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The use and abuse of ‘universal values’ in the Danish cartoon controversy

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During the Danish cartoon controversy, appeals to universal liberal values were often made in ways that marginalized Muslims. An analysis of the controversy reveals that referring to ‘universal values’ can be exclusionary when dominant actors fail to distinguish their own culture’s embodiment of these values from the more abstract ideas. The article suggests that the solution to this problem is not to discard liberal principles but rather to see them in a more deliberative democratic way. This means that we should move from focusing on citizens merely as subjects of law and right holders to seeing them as co-authors of shared legal and moral norms. A main shortcoming of the way in which dominant actors in Denmark responded to the cartoons was exactly that they failed to see the Muslim minority as capable of participating in interpreting and giving shared norms. To avoid self-contradiction, liberal principles and constitutional norms should not be seen as incontestable aspects of democracy but rather as subject to recursive democratic justification and revision by everyone subject to them. Newcomers ought to be able to contribute their specific perspectives in this process of democratically reinterpreting and perfecting the understanding of universalistic norms, and thereby make them fit better to those to whom they apply, as well as rendering them theirs.

Keywords: universalism; liberalism; deliberation; democracy; fallibilism

Introduction

In September 2005, Denmark’s largest daily newspaper, *Jyllands-Posten*, commissioned drawings of the prophet Muhammad ‘in response to several incidents of self-censorship ... in dealing with issues related to Islam’ (Rose, 2006). Twelve cartoons (not all of which were actually of the prophet) were published on September 30, subsequently causing what has come to be known as the Danish cartoon controversy. The controversy has been subject to political-theoretical analysis, primarily to consider: (a) whether there should be a legal right to such expressions; and (b) whether it is morally legitimate to mock people’s deepest beliefs.¹ Conversely, this article

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¹ See, for example, Dworkin (2006), Post (2007) and Rostbøll (2009b); and the contributions to the special issue ‘The Danish Cartoon Affair: Free Speech, Racism, Islamism, and Integration’, *International Migration*, 44(5).

analyses prominent defences of the cartoons in Danish public discourse, particularly how universal liberal values were invoked and how they were related to national (Danish) culture.

Other studies of the case have noted that the controversy involved different interpretations of core liberal principles (Lægaard, 2009), and that universal or liberal values 'became implicated in local identity constructions and struggles over national political culture' (Lindekilde *et al.*, 2009: 304; cf. Meer and Mouritsen, 2009: 352). This article, however, goes beyond these earlier studies to engage, interpret, and expand on the empirical studies of the controversy through the lens of normative political theory. It is the normative argument that bears the burden of justifying whether I have picked out the most relevant features of the controversy, while I have relied on the empirical work of others for finding these features. My conclusions can, of course, be challenged on both empirical and normative grounds. In order for political theory to contribute to the analysis of important political cases, it cannot rely on conceptual and normative analysis alone, but must endeavour to supply its own interpretation of the facts.

The defenders of the cartoons appealed to a number of values that are often regarded as liberal values, chiefly freedom of expression, but also democracy, equal treatment, and secularism. My initial aim is to understand how these values were presented in defence of the cartoons by *Jyllands-Posten's* editors and commentators, as well as the Danish government. The focus on these actors is neither based on claims of representativeness, nor on the assertion that their justification for the publication of the cartoons was the only one given in the Danish debate; indeed, *Jyllands-Posten's* stance was atypical among serious Danish newspapers, even if supported by popular tabloids (Meer and Mouritsen, 2009: 336, 341, 352). Rather, the views of these actors are the focus of my analysis because of their normative relevance, and clearly they also had great prominence in the Danish public debate.² The aim of this article, then, is to engage a normatively relevant and politically important position on the liberal and universal values put forward in the Danish public debate over the cartoons of the prophet Muhammad.

I am particularly interested in how liberal or universal values were presented as related to Danish national culture by *Jyllands-Posten* and members of the government. Were the values referred to in defence of the cartoons presented as universalistic values, or as particular Danish values?³ This question is important from the perspective of normative political theory, because the manner in which liberal values were invoked by powerful actors during the controversy served to

² I should add that some studies note that Prime Minister Anders Fogh Rasmussen's stance became more moderate and conciliatory over the course of the controversy, in contrast to the initial stance I focus on (Meer and Mouritsen, 2009: 351, 355). Whether this development was merely strategic or the product of learning is debatable. However, from the perspective of normative political theory it is still relevant to consider the tenability of the defence of the cartoons based on 'standing firm on our values'.

³ Because of this focus, I do not cover all aspects of the defence, for example, the ways in which the cartoons were seen as an expression of Danish humour.

marginalize Muslims and delegitimize dissenting voices in Danish society. The aim is to understand how these values could be used to exclude a group of people, their beliefs, practices, and opinions. Is there something inherently exclusionary in these values? Is the universalism of liberalism to blame for the failure to respect cultural differences? Or was it not liberalism or moral universalism that was at stake in the controversy, but rather particularistic nationalism? The hope is that analysing how liberal values worked in this case can provide a better understanding of how liberal principles work in relation to issues of cultural diversity. However, the aspiration is not merely critical (i.e. to understand how liberal principles were used for exclusionary purposes) but also constructive (to consider how to go beyond such exclusions).

In the latter purpose, I move beyond the unconstructive attacks on liberal universalism sometimes found in the works of Foucaultians and post-structuralists. Indeed, I argue that it is not liberal principles or moral universalism *per se* that are to be blamed for the marginalization of Muslims in Denmark, but rather the specific manner in which they were invoked by dominant defenders of the cartoons. Exclusion was the effect of how liberal principles were tied to national culture and history, as well as the fact that they were considered to be beyond democratic deliberation and perceived as infallibly understood in and by the Danish political culture. The constructive aim of the article is to argue that core liberal principles and constitutional norms should not be seen as infallible and non-negotiable aspects of democracy given by 'the nation' in the past, but rather as subject to continued democratic justification and, if need, revision by everyone subject to them; including those who do not share the history and culture in which the values were first established.

The article focuses on the defence of the cartoons and thus does not engage equally with their criticism, including the reaction from Muslims. In Denmark, most Muslims reacted with peaceful demonstrations and public agitation,⁴ while some Muslims in other parts of the world reacted violently, most extremely by burning embassies. Those reactions were partly sparked by a delegation of Danish Muslims that travelled to a number of predominantly Muslim countries to provide information about the cartoons and 'seek help'.⁵ My reasons for not analysing 'the Muslim side' to an equal extent are nothing to do with any belief that Muslims ought to be free of scrutiny or criticism, but merely space and focus. Since I criticize some defenders of the cartoons for being unwilling to listen to and engage in dialogue with Muslims, however, it should be evident that the argument

⁴ In 2008, the Danish Intelligence services discovered an alleged plot by three Muslim men living in Denmark to assassinate one of the cartoonists, Kurt Westergaard. In 2010, a man was caught attempting to kill Westergaard.

⁵ The organization behind the delegation, *Islamisk Trossamfund*, provides a brief explanation for the trip, <http://www.wakf.com/wakfweb/faq.nsf/ByUID/9EED547259F981BDC125711A0054F848?OpenDocument>. The delegation received sharp criticism in Denmark (Ammitzbøll and Lorenzo, 2007).

developed below would also be critical of Muslims who fail to show commitment to respectful deliberation.

Defending the cartoons: universal values and Danish culture

The article written by the Culture Editor, Flemming Rose, that accompanied the original publication of the cartoons appealed to a number of liberal principles: equal treatment, secularism, democracy, and freedom of expression. To insist on 'special concern for [one's own] religious feelings', according to Rose (2005), 'is incompatible with secular democracy and freedom of expression'. This focus on core liberal principles or 'Enlightenment values' never withered in the ensuing public debate (Rostbøll, 2009b). At the same time, the values were defended as *universal*, that is, as applicable to everyone independent of their culture. A key message in Rose's original text, as well as in many of the subsequent contributions to the debate, was that Muslims cannot refer to their religion or culture as a reason for being exempted from the consequences of others exercising their freedom of expression. Freedom of expression was also often justified in universalistic terms, for example, as necessary for progress and democracy, rather than as something uniquely Danish. Criticism of the cartoons and demands for respect for religious beliefs were perceived as anti-Enlightenment and relativistic. In this manner, a kind of liberal universalism played a central role in the defence of the cartoons.

This is not the whole story, however. Stanley Fish (2006), for example, gets the case completely wrong when he writes that the editors are concerned 'only to stand up for an abstract principle – free speech', while they have no interest in the content of what is expressed and have nothing against Islam. His certainty about this does not appear to be grounded in any research regarding the Danish debate, but rather in his understanding of liberalism. For him, liberalism is about abstract principles, whereas it cannot take substantive positions seriously. If Fish had studied *Jyllands-Posten's* editorial line, he would have seen that the editors are hardly liberal defenders of abstract principles who have nothing against Islam. In fact, the publication of the cartoons was merely the culmination of a long line of anti-immigration and anti-Islam editorial decisions (Hjarvard, 2006: 51f). The newspaper's position is widely, but by no means uniformly, shared in the Danish population, as indicated both by the widespread support for the government's restrictive immigration policies and in public discourse (Hedetoft, 2006; Goul Andersen *et al.*, 2007).⁶ If it is a form of liberalism that informs *Jyllands-Posten*, it is not of the type that Fish has in mind. What created the conflict was *not* one group defending abstract rights against another group taking their culture seriously.

⁶ People who do not read, listen to, or watch Danish media regularly often do not realize: (a) the extent of the role of issues related to the immigration of Muslims in the Danish public debate; or (b) how much hurt many Muslims feel by this public discourse.

This point is important, both in order to understand the case as well as the possible exclusions of liberalism correctly. The Foucaultian critics of liberalism sometimes consider the problem with liberalism as being that it 'represents itself as cultureless' (Brown, 2006: 21). However, insofar as there was a liberalism involved in the defence of the cartoons, this was not one that represented itself as cultureless. The defenders of the cartoons were defending not only the freedom of expression but also the Danish culture, as well as how this culture supports liberal values. My question is how the values used to justify the cartoons created a conflict with Muslims and how the latter were marginalized in this conflict. A key point is that this was not because freedom of expression was presented as an abstract principle, but rather because how it was connected to Danish culture.

Jyllands-Posten and its supporters simultaneously promote certain liberal principles and Danish culture and history against (what they perceive as) a foreign culture and religion: Islam. It is worth trying to understand more precisely how they view the relationship between liberal principles and national (Danish) culture. First, it should be noted that the publication of the cartoons was part of a wider cultural struggle in Denmark (Lindekilde *et al.*, 2009: 304; Meer and Mouritsen, 2009: 352). This struggle was initiated by the Danish government (to which *Jyllands-Posten* is ideologically close) and a core aspect concerns which values ought to guide immigration policies. Former Prime Minister Anders Fogh Rasmussen's position was that Denmark ought to stand firm on its (liberal) values and that this required stricter immigration laws and the assimilation of the (few) foreigners admitted to Denmark. One of the noteworthy characteristics of this culture struggle is that 'political values, including universal liberal values, are *talked about* as culture' (Mouritsen, 2006: 73). In this case, talking about norms and values as culture does not mean rejecting their universal scope; rather, the defenders of the cartoons see insight into universal values as a particular Danish accomplishment. This accomplishment is seen as relying on the substance of Danish culture and history, particularly Lutheran Christianity and the Enlightenment. Many Danish politicians (including the former Prime Minister and the Minister of Integration) as well as Lutheran theologians have recently invested much effort in arguing that Lutheran Christianity is uniquely conducive to the separation of politics and religion. Of course, the Lutheran understanding of secularism is not the only possible understanding, but this point was absent from the dominant discourse (Berg-Sørensen, 2006; Sløk, 2009).

Thus, in the Danish culture struggle, of which the cartoon controversy was the climax, liberal values are presented as being embodied in Danish culture. These values are not merely presented as *part of* Danish culture in the sense that they could be part of many different cultures; nor is the idea simply that Danish national culture is a liberal culture. Liberal values are presented as so entangled in Danish culture that in order to understand and accept them, one must understand Danish history and assimilate into Danish culture. In this view, there is only one true way of understanding and accepting liberal principles. Muslims might be able

to come to share these values; but doing so requires that they should undergo a history similar to that which Danish Lutheran Christians have undergone, via the privatization of religion as found in Luther and by attaining a critical distance from religion as advocated by 'the Enlightenment'. By tying liberal principles so closely to one specific history and culture, they can be used to vindicate an entire way of life and condemn another, rather than merely as the normative basis for discussing what is right and wrong in concrete cases.

This representation of liberalism renders it impossible for Muslims to accept it without disconnecting themselves entirely from their history and culture.⁷ This is the case, first, because the content of this liberalism extends beyond moral principles of right and wrong to substantive questions of the good life. In Rawlsian terms, the connection of liberal principles to a particular culture establishes a form of comprehensive liberalism that can only be shared by those who share metaphysical beliefs about the source of moral obligations and substantive conception of the good (Rawls, 1993). Second, this is the case because the values are seen as products of a specific history and culture, and it is implied that in order to accept them, one must accept not only the validity of the principles, but also the superiority of the history and culture that created them, that is, Danish history and culture. To avoid any misunderstanding, the point here is *not* that when norms arise within a particular culture and this is made explicit that this makes it impossible for people from other cultures to adopt them. Clearly, all norms are discovered somewhere and by somebody, yet this has no bearing on their validity or universality. Rather, exclusion arises when it is implied that the only way to understand the norm or value in question is to follow one particular historical path or assimilate to the culture in which they arose.

The culturalist's focus on genesis was often combined with the insistence that liberal principles are universal. Former Prime Minister Rasmussen repeatedly emphasized the importance of 'standing firm' on 'our' values, which he contrasted to 'being weak on values' or relativism. One of the actions that arguably led to the escalation of the cartoon controversy was Rasmussen's refusal in October 2005 to meet a group of diplomats from Muslim countries who had complained about the negative portrayal of Islam in the Danish public sphere (Rothstein and Rothstein, 2006: 32ff). He told the press, 'This is a matter of principle. I won't meet with them because it is so crystal clear what principles Danish democracy is built upon that there is no reason to do so' (Ammitzbøll and Lorenzo, 2007). Looking back at the crisis a year later, he explained, 'The Enlightenment ... has been the driving force behind European development and decisive for why we have come as far as we have. Therefore, we have something here (i.e. freedom of expression), with regard to which we cannot give one millimetre' (J. Hansen, 2006). Other prominent

⁷ I do not mean to essentialize Muslims here or suggest that all Muslims understand their history and culture in the same way, but only to suggest that most Muslims in Denmark have a different culture and history than that promoted by many of the cartoon defenders.

participants in the public debate insisted that dialogue with Muslims was fine, ‘as long as one has clarity regarding one’s own values and principles, which are nonnegotiable’ (Jespersen and Pittelkow, 2006: 178). It was not only the principles in general, not freedom of expression as such, that was referred to as non-negotiable; it was the defenders’ own particular interpretation of the principles and the implications of that interpretation, which were placed beyond discussion.

For many defenders of the cartoons, being liberal and universalistic meant presenting liberal principles as being above and beyond discussion, and in particular as incontestable from the perspective of Islam. Criticizing *Jyllands-Posten* or claiming that the right to freedom of expression ought to be exercised while granting consideration to religious sentiments was seen as either relativistic (if made by ‘the politically correct elite’) or fundamentalist (if made by Muslims themselves). In this way, opposition to the cartoons was represented as a rejection of liberal principles in general and freedom of expression in particular. The critics could not therefore get the idea through that they were merely (i) criticizing *Jyllands-Posten*’s use of the right and not the right itself;⁸ or (ii) if they were addressing the legal right itself that they were discussing its limits rather than arguing for its abandonment. This dichotomous understanding of liberalism and anti-liberalism was presented as related to a notion of a clash of cultures.⁹ Two *Jyllands-Posten* journalists have since written a book about the case in which they declare that it was ‘evidently’ about ‘two sets of incompatible values that had to clash’ (Hansen and Hundevadt, 2006: 242). This sounds as though a uniform set of Danish values that includes the absolute freedom of expression and the mockery of religious symbols as essential features exists in opposition to a Muslim set of values that rejects freedom of expression and requires extreme concern for religious feelings. This picture pays little attention to the fact that Denmark has hate speech and blasphemy laws and, as a matter of the ethics of public discourse, that few people think that *no* concern for religious feelings should be shown. It also fails to acknowledge that there were no Muslims in Denmark demanding the total abandonment of freedom of expression or that Islam should be placed beyond criticism. Muslims simply demanded that their religion not be mocked or ridiculed.

Liberal universalism and democratic fallibilism

Whereas the preceding section was concerned with the particular question of how liberal values were used to marginalize Muslims by some defenders of the Danish cartoons, the present section turns to the more general question of whether liberal

⁸ One study of the coverage of the case in the Danish newspapers was ‘not able to find one newspaper or individual person who denied *Jyllands-Posten*’s legal right to publish the cartoons’ (Hervik and Berg, 2007: 37f).

⁹ Samuel Huntington’s thesis concerning a clash of civilizations was one of the main frames in the news coverage of the controversy in many countries (Kunelius and Eide, 2007: 12).

values are *necessarily* exclusionary. While acknowledging that any understanding of liberal principles is particular, partial, and as such exclusionary, I argue that this is no reason to abandon them or to abandon universalism. The challenge is, first, to find a way of thinking about liberal values that acknowledges their dependence on culture and history without discarding their claim to universality; and, second, to determine how to acknowledge this connection to culture without seeing the values as inseparable from any specific culture.

The cartoon case illustrates a failure to meet the challenges to liberalism posed by cultural diversity, a failure on liberalism's own terms insofar as it aims at equal respect for all independent of religion. One cannot claim that prominent defenders of the cartoons failed to see that principles arise in particular contexts; on the contrary, by tying the principles so closely to one particular culture, they denied the possibility (i) that one can come to understand and accept liberal principles via a different path; and (ii) that they (Danes) could acquire a deeper or better understanding of liberal principles and their application by listening to the perspectives of others. In other words, they did not see liberal principles as dialogically constituted, nor did they accept that any formulation of them is fallible, provisional, and therefore improvable in light of new insights, which can come from anyone. Finally, they did not acknowledge the importance of the principle that all those subject to the norms should be their authors. Thus, I shall further discuss three exclusionary aspects of the particular liberalism found in prominent defences of the cartoons.¹⁰ These aspects concern the relationship between (liberal) values and national culture, the issue of fallibilism, and finally democratic discussion, interpretation, and the revision of constitutional norms.

Liberal values, universalism, and culture

An important conclusion in the analysis of the cartoon case was that insofar as universal liberal principles were used to delegitimize and marginalize Muslims, this was *not* done by presenting the principles as beyond culture, but rather by talking about them *as* culture. This is not a case of exclusion based on the denial of the cultural and historical aspects of liberalism that some Foucaultians and post-structuralists attack; it was the presentation of liberal principles as inseparable from a specific history and culture that led to the notion that Muslims could not possibly share these principles.

This conclusion might lead to the impression that to make liberalism more inclusive would require making it cultureless.¹¹ But that is not the point I am driving at.

¹⁰ In speaking about a 'particular liberalism', I am indebted to Per Mouritsen's phrase 'particular universalism' (Mouritsen, 2006). Mouritsen, however, does not use this useful concept in his study of the cartoon controversy (Meer and Mouritsen, 2009).

¹¹ As will become clear below, I think that inclusion requires not just equal negative rights but also that everyone be able to participate as co-legislators in determining the meaning and extent of these rights. Thus, a liberal society can be exclusionary even if everyone enjoys equal rights.

Post-structuralists are correct that it is impossible to formulate universal principles that are not culture-bound and that this means that every formulation of universal principles is a particular formulation. As Ernesto Laclau (1996: 34) puts it, 'universality is incommensurable with any particularity but cannot, however, exist apart from the particular'. However, one need not be a post-structuralist or necessarily reject the idea of universal principles in order to accept this. Indeed, I shall argue that the affirmation that any embodiment of liberalism in a concrete context means that it has 'cultural facets' and is 'imprinted by particular cultures' does *not* 'undermine liberalism's claim to universalism', as Foucaultians such as Wendy Brown (2006: 24) claim. We must be much more precise as to which aspects of 'liberalism' can and cannot lay claim to universality. And we must define more clearly what it means to lay claim to universality.

Acknowledging that every formulation and application of liberal principles is particularistic and exclusionary need not imply an overall rejection of moral universalism. Nor does the putative fact that any particular formulation and institutionalization of liberal principles has 'constructive and repressive powers' entail that liberal principles *as* universalistic principles are no better than other principles (Brown, 2006: 22). We must distinguish between the universal validity claimed for a norm and its acceptance in a particular context, its meaning in a particular political culture, its formulation in a particular constitution, its institutionalization, and so forth.¹² Obviously, the local acceptance of a norm will always reflect the culture(s) and history(ies) of those who accept it. The same is true of how it will be formulated in the constitution and which political institutions and policies it will require.¹³ A claim to (universal) validity can only be raised and accepted from within a particular context (Habermas, 1996: 18–21). It is also undeniable that power differentials will affect which norms are accepted. Consequently, under normal circumstances, imperfect as they are, no particular liberalism – that is, no particular liberal political culture and no particular liberal institution – is fully inclusive or a perfect incarnation of universality. This is an important point that some 'liberal' practitioners, including the defenders of the cartoons, could learn from.

However, that every political culture is particular and thus not fully inclusive does not mean that one political culture cannot be *more* universalistic and inclusive than another. And judging and comparing how inclusive different political cultures are require standards with cross-cultural validity. It is also fallacious to think that it is the appeal to universal norms *as such* that makes a particular

¹² Cf. Jürgen Habermas's (1996: 20) distinction between the appeal to universal validity (*Gültigkeit*) in claims of rightness and truth and the social validity or acceptance (*Geltung*) of such claims.

¹³ Bhikhu Parekh (2005: 133, 135) presents an interesting discussion of how it is 'possible to arrive at a body of moral values which deserve the respect of all human beings', while at the same time acknowledging that these 'need to be interpreted, prioritized, adopted to, and in case of conflict reconciled, in the light of the culture and circumstances of each society'. However, I do not share Parekh's general framework or specific conclusions.

political culture exclusionary. Indeed, such appeals are necessary in order to criticize a political culture for being exclusionary. Appeals to universality bring people different from ourselves into the scope of our claims, and can be used by all parties equally. To be sure, such appeals *can* lead to exclusion and the silencing of dissent, as in the Danish case. This was not only because the values were tied to Danish culture, but also because they were seen as beyond discussion. It is exclusionary to claim that one's particular culture is the infallible incarnation of universal values. Moreover, one should remember that there is a difference between claiming universality for one's entire political culture and for some principles to which that culture is committed, even if they are fundamental to it.

A further distinction underlies the preceding discussion, one which is neglected by the broad-based attacks on liberalism sometimes mounted by post-structuralists and post-modernists. This is the distinction between what Ronald Dworkin (1978) refers to as liberalism's constitutive morality and its derived positions. The constitutive morality of liberalism is its core norms and values, while its derived positions are the means (e.g. policies and institutions) that are believed to best further these norms and values. Derived positions are more sensitive to contexts and therefore allow for greater diversity than constitutive morality. The fact (where this holds true) that specific liberal policies and institutions are exclusionary does not entail that liberalism's constitutive morality is wrong. Indeed, criticisms of liberal institutions and policies often rely on fundamental liberal principles. When one criticizes specific 'liberal' institutions or policies for being exclusionary and oppressive, one implicitly accepts the norms of freedom and equality that most people agree are core liberal principles.

This does not mean that citizens can or should separate discussions of values and norms, on the one hand, and the best means to satisfy them, on the other. In actual public deliberations, issues of norms and means cannot be meaningfully separated; in fact, it is often impossible to discern whether the disagreement is over values or the best means. Indeed, the problem in the Danish culture struggle is often that some people attempt to separate disagreements over values from the discussion of concrete issues, or that they reduce the latter to the former (Loftager, 2006). The cartoon controversy became a discussion of whether one was for or against freedom, democracy, equality, and progress rather than a discussion of the concrete challenges at hand and how to best interpret and apply these norms to these challenges. My point is simply that it is erroneous to reject liberalism as a whole on the basis of exclusionary tendencies in a particular constellation of liberal institutions, policies, and political culture, which is always possible.

Fallibilism, not relativism

The previous argument implies that acknowledging that every actual formulation of universal principles is imprinted with a particular culture(s) and history need not lead to scepticism or cultural relativism. Rather, it ought to lead us to endorse

moral fallibilism, that is, to acknowledge that every belief about the validity of norms and principles could, in principle, be mistaken and should hence be seen as revisable in light of further learning. A core failure of the particular liberalism of many of the defenders of the cartoons was that they wanted to place core liberal principles and institutions beyond discussion. They failed to understand what Hilary Putnam (1994: 152) takes to be 'the unique insight of American pragmatism', namely 'that one can be both fallibilistic *and* antiskeptical'. Some defenders of the cartoons, including the former Danish Prime Minister, thought that in order to be principled and liberal, one must stand firm and refuse to discuss core values or constitutional norms. Not only were abstract principles (such as equality and individual freedom) placed beyond discussion; specific constitutional rights (e.g. freedom of expression) as well as the political-cultural understanding of the ethics of public discourse (how citizens ought to use their freedom of expression) were also.

There are several advantages to the fallibilistic position as compared to the relativistic one. I will mention two. First, it corresponds better to how people normally talk about values and presents their moral positions. Most people generally present their moral views as right for everyone; not just for those who share their culture (Waldron, 1998–99: 310). When Danish Muslims criticized the cartoons, they did not merely claim that they were wrong according to the norms of their religion or their culture; they appealed to the (universalistic) idea that it is wrong to show disrespect for others' deepest commitments.¹⁴ And when some actors referred to religious norms (e.g. that it is wrong to make images of Muhammad and to mock him), they perceived them as applying to everyone, that is, as norms of universal scope. To defer to Muslims' demands would not be to accept relativism, but rather to do what they see as right for everyone.¹⁵ Fallibilism makes moral disagreement and moral discussion meaningful, because it presupposes that we can never place any belief beyond contestation, and that there is always something to learn and a right answer to look for. Cultural relativism makes cross-cultural dialogue meaningless, because if values are relative to culture, there can be no disagreements or attempts to overcome them through dialogue, but only reports of differences (Caney, 2005: 48) or power struggles over whose 'value set' wins.

To say that fallibilism corresponds better to actual practice is not to imply that people are necessarily self-conscious fallibilists; indeed, in the cartoon controversy it was a failing that many were not (sufficiently) so. However, fallibilism is compatible with the fact that the parties to the controversy disagreed and argued

¹⁴ This can be seen in the contributions to the public debate by, for example, the Islamic Organization in Denmark; see Jerichow and Rode (n.d.: 18–22, 35–39) and its homepage: <http://www.wakf.com/>

¹⁵ Ronald Dworkin and Martha Nussbaum, among others, have argued that relativism is self-defeating, because insofar as most cultures are non-relativistic, to defer to local cultural norms cannot mean to accept relativism (Caney, 2005: 34f).

over values. Although the defenders of the cartoons were not self-conscious fallibilists nor did they present their value beliefs as provisional and reversible, in order to be consistent, they would have to do so and could in principle be convinced of this. In contrast, the relativist position works only from the perspective of the observer; participants would be unlikely to accept that *the only thing* that ‘justifies’ the prevalence of their cultural values is that they are those of the most powerful. People will usually indicate that the reason that their values ought to be accepted is that they are right, true, or the best. If they do not make this claim, they usually claim that the values of the majority or of those who belong to the nation should prevail, in which case they are appealing to the rightness of majority rule or of nationals’ right to decide in their own nation – and these principles are presented as possessing a validity that reaches beyond any specific culture.

Second, fallibilism has important inclusionary and democratic implications. Fallibilism entails that nobody can claim to have the final answer; no one can claim that his or her culture presents the perfect embodiment of universal values. Therefore dissent cannot be silenced; any claim to truth or rightness can be questioned and can in principle be found to be mistaken (Rostbøll, 2008: 195f). One might think that in the cartoon case, this would speak in favour of the defenders of the cartoons; after all, they occasionally referred to John Stuart Mill (1998: 22), who defended freedom of expression with reference to the idea that silencing an opinion is an (unwarranted) ‘assumption of infallibility’. The paradox in the defence of the cartoons is that while it partly relied on the idea that freedom of expression is a prerequisite for public deliberation, it had the effect of discouraging dissent. To borrow an apt phrase from Rogers Smith (2008: 296), some used a ‘rhetoric that valorize[s] democratic ideals while discouraging democratic practices’.¹⁶

The defenders of the cartoons apparently believed that there can be legitimate disagreement and discussion about all kinds of issues, but the right to freedom of expression is beyond discussion because it is the prerequisite for such discussions. However, public deliberation does not require absolute freedom of expression (no country has that), and it is at least possible to discuss which degree of legal restraint promotes the best and most inclusive form of democratic deliberation.¹⁷ My aim is not to argue either way about this issue, but only to note that there are legitimate disagreements over the extent of freedom of expression. To call those who disagree with the currently accepted limits to freedom of expression, anti-democratic closes the discussion and calls their status as co-citizens into question. Moreover, demanding that the right to freedom of expression be exercised while showing respect for others’ deepest commitments does not undermine democracy

¹⁶ Smith (2008) analyses the rhetoric of President George W. Bush, and it is interesting to see that, despite its much stronger religious aspects, it has some of the same effects as the rhetoric often used in the Danish context.

¹⁷ For an argument favoring certain limits on freedom of expression for the sake of improving public deliberation, see Sunstein (1995).

as such. Vibrant democracies include deliberations about deliberation, that is, people deliberate about which forms of deliberation best secure the intrinsic and instrumental values of deliberation – and of democracy, the issue to which we now turn.¹⁸

Before we turn to democracy, however, I should note the narrow character of the argument for fallibilism given above. I have only defended fallibilism in relation to moral–political beliefs and not a broader epistemological fallibilism (not because I do not think the latter is defensible, but because I cannot supply a defence here). The provisionality of moral and political principles that a moral–political fallibilism implies can be defended not only on epistemological grounds but also on a ‘moral basis’, as theorists of deliberative democracy have argued (Gutmann and Thompson, 2004: 110ff).

Democratic iterations, co-legislation, and equal respect

I have considered how we can uphold a commitment to core liberal norms while acknowledging that they are always culturally and historically situated and imbued. It is important to note that what is especially permeated with history and culture is the specific formulation and institutionalization of the norms, that is, the actual agreement on, interpretation, and application of the norms by a particular community. However, principles of freedom and equality, respect and inclusion can never be fully or perfectly realized, and thus have a meaning and content that transcend any context, a content that can be appealed to in criticisms of socially accepted meanings.¹⁹ I will now turn to how liberal norms are agreed to by a particular community, and specifically, the extent to which they should be subject to democratic deliberation.

Part of the response to the challenge of connecting universalistic values to particular cultures without making them inseparable from any such culture is to conceive of liberal norms as subject to continued democratic deliberation, reinterpretation, and revision. Fallibilism should extend to liberal rights and the conditions of democratic practice itself, not only to ordinary policies. Thus, liberal principles and constitutional norms should not be seen as incontestable aspects of democracy that have already been established by ‘the nation’ and its past; instead, they ought to be subject to recursive democratic justification and, if needs be, revision by everyone subject to them, including those who do not share the history and culture in which the principles were first agreed to. Newcomers must be able to contribute their specific perspectives in this process of democratically

¹⁸ Cf. James Bohman (2007: 2) who writes, ‘democracy is reflexive and consists of procedures by which its rules and practices are made subject to the deliberations of citizens themselves’. To be sure, there is a minimum beyond which one cannot go without undermining the reflexive character of democracy. Bohman (2007: 28) calls this ‘the democratic minimum’.

¹⁹ To avoid misunderstanding, by saying that these principles transcend any context, I do not intend to say they are not historical and cultural products; they are products of learning processes that take place in particular contexts, but they have a surplus of meaning that goes beyond any specific context and that can be appealed to in different contexts.

reinterpreting and perfecting the understanding of universalistic norms, and thereby make them fit better to those to whom they apply, and also 'make them theirs'. Norms are not thus rendered cultureless; they are but separated from one specific culture and made the product of the exchange between members of society with different cultural backgrounds. When members of minority cultures demand inclusion in the democratic process, they appeal to the principles of freedom, equality, and respect that have a meaning and validity that extends beyond the particular culture that excludes them. Thus, I suggest embedding liberal universal norms in democratic practices, which are always particular and imbued with culture(s). To connect universality with particularity in the proper manner, universalistic norms must be accepted by a particular community by deliberative democratic means. And for liberalism to live up to its norms of equality and respect, its principles and institutions must be subject to continued democratic justification and revision.

One of the core liberal principles is that everyone ought to be treated with equal respect. This is often regarded as a matter of affording everyone equal rights protecting their negative freedoms, for example, freedom of religion treats Christians, Muslims, and atheists with equal respect, since each is seen as capable of determining their own conception of the good in relation to religion. However, to treat everyone with respect, it is just as important to treat them as equally capable of understanding and determining what it means and requires to be afforded equal negative freedoms, and how one ought to interpret different rights. Once again, the cartoon case is instructive. One important aspect of the disrespect shown to Muslims was that they were not treated as equal co-legislators of the laws and informal political-cultural principles that all members of society are subject to. This was because the defenders of the cartoons presented both freedom of expression and the way it was exercised by *Jyllands-Posten* as incontestable and nonnegotiable aspects of a secular democracy.

In the present context, the special issue of concern is the (informal) ability to be heard as an equal in common deliberation in the public sphere, not legal citizenship rights. The type of exclusion from co-legislation that I speak of is invisible from the perspective of an aggregative or majoritarian conception of democracy;²⁰ it can only be understood in a deliberative model that understands the opportunity to be an equal participant in public deliberation as an essential aspect of participating in collective self-legislation. Treating everyone as a co-legislator does not require that consensus is achieved in this model; the requirement is that within the deliberative process in which the majority is formed, everyone is treated as capable of contributing valuable insights, and everyone is open to listening to and learning from these insights. When a majority decision is made, this is seen not as an infallibly correct decision that requires the minority to

²⁰ At one point, Prime Minister Rasmussen justified the permeation of Danish (political) culture with Christian values with the idea that it is natural in a democracy that the religious beliefs of the majority will dominate (Sløk, 2009).

suspend their judgment, but merely as a necessary – but temporary and reversible – closure of the discussion (Rostbøll, 2008: 104f, 195f). Moreover, the norm is not that everyone’s position or goal should have the same influence on the final result, but rather that each contribution should be equally heard and discussed; and then accepted or rejected on its merits (Bohman, 1997: 335).

To be sure, it is not easy in practice to include new immigrants in public deliberation; they might not even speak the language. The point is not that it is easy – or even achievable – but rather that the norm of equal respect is a regulative ideal that requires we do not exclude anyone from the deliberative process in which common norms are determined and justified. What is required, and what was lacking in the Danish case, is a genuine willingness to consider the views of others and to regard them as serious contributors to common deliberation (cf. Smith, 2008: 295). The focus on public deliberation should not be understood as a rejection of the importance of legal status, but only as a consequence of the focus on the cartoon controversy, which was a controversy in and about public deliberation. Neither should it be seen as neglecting the notion that Denmark’s strict immigration and naturalization laws also contribute to making Muslims feel they are not regarded as equal citizens and co-legislators.

In an article that is very close to *Jyllands-Posten*’s own justification for publishing the cartoons, Randall Hansen writes, ‘like all actors within the liberal state, observant Muslims’ beliefs are to be respected, but they are to be accommodated within the norms and principles that underpin the liberal constitutional state. They cannot be accommodated through a revision of those norms and principles’ (R. Hansen, 2006: 8). Note that Hansen does not write ‘rejection’ of liberal principles, but ‘revision’. Thus, liberal principles are presented as given, not as abstract principles that can and should be appropriated by particular communities and tailored to fit those who are subject to them, but as beyond scrutiny, interpretation, and discussion; indeed as beyond democracy. Hansen further writes that ‘free speech ... is part of the liberal democratic framework, not a negotiable addition to it’ (R. Hansen, 2006: 16). While he is correct that without *any* freedom of expression democracy is impossible, it does not follow that different ways of interpreting the proper limits of that freedom or institutionalizing the norm cannot be compatible with democracy. The latter was the substantive issue in Denmark.

In order to respect a minority, it is not enough merely to claim that its members are subject to the same norms as everyone else while they are not considered as equally able to understand, give, and revise these norms. Hansen rejects Muslim exceptionalism (the idea that Muslims are different from other immigrants by not sharing values with the West)²¹; but why not then listen to them and allow that they have legitimate points to make in public deliberation about how best to legally delimit and exercise the right of freedom of expression? If he and like-minded Danes

²¹ Here Hansen departs from *Jyllands-Posten*, which believes in Muslim exceptionalism.

had listened, they would have heard that what most Danish Muslims demanded was not an abolition of freedom of expression, but rather its respectful use or the application of already-existing Danish blasphemy or hate speech laws.

My argument, then, addresses instances in which the right of freedom of expression (and other liberal norms) is presented in a manner that preempts and excludes the possibility of a group of people becoming co-authors of core constitutional norms and shaping the shared political culture. Again, the focus is on the deliberative process that influences law-making and political culture. The normative concern is exclusion from what Seyla Benhabib (2004: 181) refers to as democratic iterations and jurisgenerative politics, that is, 'iterative acts through which a democratic people that considers itself bound by certain guiding norms and principles reappropriates and reinterprets these, thus showing itself to be not only the *subject* but also the *author of laws*'. Note that in Benhabib's formulation, the parties are guided by certain norms. She terms these the meta-norms of deliberation, and they are universal respect, which 'means that we recognize the rights of all beings capable of speech and action to be participants in the moral conversation', and egalitarian reciprocity, which requires 'that in discourses each should have the same rights to various speech acts, to initiate new topics, and to ask for justification of the presuppositions of the conversations' (Benhabib, 2004: 13).

Thus, the type of deliberation and revision of core principles we are talking about here is not a deliberation in which everything is up for grabs, as sometimes appears to be advocated by post-structuralists. Laclau (1996: 35), for example, writes, 'If democracy is possible, it is because the universal has no necessary body and no necessary content; different groups, instead, compete between themselves to temporarily give to their particularisms a function of universal representation'. Laclau is right if the point is that democracy presupposes that no one already knows what is best, or that no one has privileged access to the universal; but he is wrong if he means that we have no normative guidelines or that no solutions are better or more universalistic than others. It is one thing to say that the precise meaning and implications of norms ought to be open to reinterpretation; it is quite another to hold that such negotiations should be without normative restraints and guidelines. The latter reduces the democratic process to a power struggle, and there is no reason to think that its result will be more egalitarian or inclusive than that which preceded it (cf. Lægaard, 2008: 166f). Moreover, if there is no content to the universal, if we have no normative guidelines, then there is no reason to hold that democratic procedures and dialogue are more legitimate than, for instance, violence.²² Democratic procedures are the most legitimate because of the intrinsic properties of respect and equality that they express, as well as their epistemic value. Accepting them requires some normative guidelines, while the

²² This is not to say that democratic deliberation is the only legitimate means in all circumstances (Rostbøll, 2009a).

epistemic value of democracy presupposes the possibility that some results are better than others.

The present argument relies on the norm of equal respect, which, in keeping with the Kantian tradition, requires not only that everyone enjoy equal negative liberty, but also that everyone ‘must always be regarded as at the same time *lawgiving*, since otherwise [his or her will] could not be thought as an *end in itself*’ (Kant, 1997: 42, Ak. 4: 434). Treating someone with respect not only means treating them as an equal in *one’s own view* of what that means, but also accepting that they possess insights into what it means to be treated as an equal, and in particular what it means to treat them as an equal (cf. Hill, 2000: 83). This requires that one affords one’s counterpart equal standing, both as a person subject to common laws and principles *and* as the co-legislator of those laws and principles. Assuming that ‘one has a fundamental ‘lawgiving’ standing that others simply don’t have’ is disrespectful and a form of moral arrogance (Darwall, 2006: 136) – a form of arrogance that one finds in many of the defences of the cartoons (Rostbøll, 2009b).

The advantage of a fallibilistic and dialogical universalism lies not only in the fact that it requires respect for everyone in the process of giving common norms, but also in that it acknowledges that any formulation of these norms might be biased and could be improved. The respect we show each other as co-legislators is reinforced when we see everyone’s participation as necessary for finding the epistemically best solutions to common problems. But, why should we think that everyone’s participation is necessary for finding the best solutions? My argument here is limited to the claim that participation by members of all cultures present in a society is necessary for learning what it means to treat everyone with equal respect.²³ The Danish cartoon controversy illustrates that when members of the majority culture lack insight into a minority culture, it becomes almost impossible for them to know how to treat members of the latter as equals, even if they are committed to norms of respect and equality (Rostbøll, forthcoming). We should not essentialize culture or assume that all Muslims agree on what it means for Muslims to be treated with respect. It is therefore important that not only the representatives of a culture are included in the democratic process, but that everyone can speak for themselves.

The argument for opening up democratic deliberation and the reinterpretation of core liberal principles requires that we do not see any and all criticisms of universalistic liberal norms as relativistic resistance or anti-democratic. There can be legitimate deliberation about the exact meaning and application of these principles. As Jeremy Waldron (1998–99: 311) notes in a discussion of human rights, resistance to human rights is often not relativistic resistance to universalistic claims, but rather a rejection of the *content* of these norms; a rejection which is often made in universalistic language. Similarly, it is misguided and unproductive to view the criticism of *Jyllands-Posten’s* exercise of their freedom

²³ For a fuller argument about the epistemic dimension of deliberative democracy, Rostbøll (2008: Ch. 7).

of expression as a universalism/relativism conflict. Rather, it should be regarded as part of a legitimate democratic deliberation about which norms are best for regulating our interaction, as well as how these norms ought to be interpreted and applied to concrete cases.²⁴ For such deliberation to be meaningful, we must hold on to the importance of regulative ideals and the possibility that norms may possess universal validity. First, such norms show why egalitarian, inclusive, and respectful dialogue is more legitimate than violent struggle. Second, common deliberation only makes sense if participants believe that some results are better than others, and that they can find these results despite cultural differences.

It might be noted that there are – and must be – limits to the openness of the deliberative democratic reinterpretation of core democratic and constitutional norms, and to inclusiveness regarding points of view. First, the recommended type of public deliberation can only get off the ground if there is agreement as to the legitimacy of this type of inclusive and respectful deliberation; in other words, there must be agreement on the metanorms of deliberation. Second, the extent of the reinterpretation and revision of core democratic and constitutional norms must have its limits, either because such reinterpretation and revision could undermine the possibility of democratic deliberation in the future, or because it could violate some minimum interpretation of human rights that democratic decision-making should never be allowed to violate. These points raise important and difficult questions. Let it be emphasized that the metanorms of deliberation have substantive moral content; they entail a commitment to norms of equal respect, reciprocity, and deliberation that some people reject. I have argued that if we abandon these norms, then we are left in a moral vacuum without any guidelines, and that this would lead us nowhere. It is self-undermining to claim that achieving full inclusion (a moral demand) would require that we abandon all substantive moral commitments. The hope is that the proposed notion of the recursive democratic reinterpretation of core constitutional norms relies on moral premises that are thin enough to allow broad agreement, yet thick enough to avoid injustice.

This also means that even though the metanorms arose within particular cultures, they are not exclusionary in the way the values invoked by the defenders of the cartoons are; first because they are thinner and more abstract, and second because they are what makes the inclusive discussion of other values not only possible but obligatory. The suggestion is that this is the best we can do in terms of equal respect and the inclusion of people with different cultural backgrounds and comprehensive doctrines. I do not claim that this will satisfy everyone or accommodate all points of view equally, but nothing will. Moreover, it is important to base our discussion of the present case on the fact that many Danish Muslims demanded respect. Insofar as the complaint was a lack of respect, it

²⁴ For an instructive discussion of the importance of interpretation in applying universal norms to concrete cases, Galeotti (2007: 92f, 105f).

would be self-contradictory to require reinterpretations of rights and informal norms that would violate the principle of equal respect (cf. Forst, 2007: 302).

Conclusion

The guiding idea behind this article is that an analysis of a concrete case such as the Danish cartoon controversy can contribute insights into the general political-theoretical problem of the relationship between universal liberal principles and cultural diversity. My analysis suggests that referring to universal liberal values can be exclusionary when dominant actors fail to distinguish the majority culture's interpretation of these values from the more abstract ideas. Prominent defenders of the Danish cartoons obscured the fact that their understanding of freedom of expression (the right and how one ought to exercise it) was a particular interpretation of a universal norm, and thus placed it beyond the limits of legitimate debate. By presenting their own understanding of freedom of expression as the universally true and only possible understanding, they took any criticism as a rejection of that universal norm, rather than as a suggestion for the best interpretation of a universally valid norm and how to apply it to a concrete case. Conversely, when we insist that no concrete interpretation of or agreement on a constitutional norm (*Geltung*) is identical with universal validity (*Gültigkeit*), dissent can no longer be delegitimized; critics of the dominant interpretation can always make validity claims that 'overshoot every context' (Habermas, 1996: 21).

The solution for attaining the greater inclusion of minorities is not to abandon liberal universalism, but rather to engage everyone in the deliberative democratic process of continually reinterpreting, refining, and revising the norms to which everyone is subject – and this includes the very norms that are the precondition of the democratic process itself. In such deliberative processes, the criticism of current dominant understandings of core liberal and democratic values and norms is seen not as anti-democratic or relativistic, but as legitimate disagreement concerning their meaning and application in particular contexts. This is not to deny *a priori* that some people might entirely reject some liberal values and norms, but rather to open up the possibility for many different perspectives to contribute to attaining a deeper and better understanding of these values and norms. In this way, everyone will be treated with respect, not only as subject to the same norms as everyone else, but also as the co-authors of these norms. Thus, at least those newcomers who are committed to equal respect and who are interested in participating in common deliberation (even if they understand these norms and practices differently to the way the majority is accustomed) are not delegitimized and marginalized because of their alternative views and backgrounds.

Admittedly, this solution leaves out those who reject the norms of equal respect and common deliberation or who reject democracy entirely. They will ask for more or for something different than that which I believe we morally owe to one another. Not that the latter should be excluded from stating their opinions, but

insofar as their claims violate the metanorms of deliberation, for example if they do not accept the equal rights of others to speak and be heard, their claims cannot be accepted within the framework suggested here. However, how could a theory with critical and normative intent avoid deeming some views unacceptable? One cannot seek refuge in the notion of solving the problem with a procedure with no normative content, because then we lack any reason to choose this procedure over another. The fallibilistic and deliberative approach suggested in this article implies that the moral agreement needed is relatively limited, and allows for the recursive reinterpretation and revision of the procedure itself.

To see core liberal norms as subject to recursive democratic justification and redefinition by those subject to them implies connecting them to the particular cultures of the latter. The values and norms of a particular community ought not be seen as cultureless representations of the universal, nor as perfectly incarnated in a settled and unified national culture. Rather, liberal norms and values should always be regarded as fallible and contestable, as open to refinement and perfection in light of the insights everyone is considered capable of contributing regardless of their cultural background. The interpretation of constitutional norms should not be seen as the prerogative of those who share the culture in which they were first agreed to; instead, it must be the shared enterprise of everyone subject to them, including minorities and newcomers.

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